

STATEMENT OF
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BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
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Good morning, Mr. Chairman, Ranking Member Kirkpatrick, and other Members of the Subcommittee. Thank you for the opportunity to be here today to provide the Department of Veterans Affairs (VA) views on pending legislation affecting VA's programs, including H.R. 3593, the VA Construction Assistance Act of 2013 and a draft bill regarding the oversight of contracts awarded by VA to small business concerns owned and controlled by Veterans with service-connected disabilities.

Other bills on today's agenda were not received in time for VA to provide testimony here today, but we will be following up with the Subcommittee for the record at a later time. Those bills include H.R. 4261, regarding VA research on Gulf War illness and a draft bill regarding VA's information security programs

Mr. Chairman, accompanying me here today is Mr. Tom Leney, Executive Director for Small and Veteran Business Programs for VA.

H.R. 3593, the VA Construction Assistance Act of 2013

Section three of the bill would institute certain requirements for VA major medical facility projects, including mandates for the use of a medical equipment planner, use of a project management plan, and use of a construction peer excellence review. It would also require development of a metrics program to enable the monitoring of change-order processing time and goals for the change order process consistent with the ‘best practices’ of other federal agencies.

Section four of the bill would mandate that within 180 days VA enter into an agreement with the U.S. Army Corps of Engineers (USACE) to procure a “special project manager” on a reimbursable basis to oversee three named current VA major construction projects for facilities in Denver, Colorado, Orlando, Florida, and New Orleans, Louisiana. The bill enumerates the duties of the special project manager and requires that plans and progress reports be provided to the House and Senate Committees on Veterans’ Affairs. It also establishes that VA provide the special project manager with the requisite information and administrative assistance necessary to carry out their tasks.

VA has a strong history of delivering facilities to serve Veterans. In the past 5 years, VA has delivered 75 major construction projects valued at over \$3 billion that include the new medical center complex in Las Vegas, cemeteries, polytrauma rehabilitation centers, spinal cord injury centers, a blind rehabilitation center, and community living centers.

VA appreciates the strong interest and support from the Subcommittee to ensure that our major construction projects, and more specifically the Denver, Colorado, New Orleans, Louisiana, and Orlando, Florida facilities, are delivered successfully. While there have been challenges with these projects, we have taken numerous actions to strengthen and improve our execution of all VA's ongoing major construction projects, including the three projects that H.R. 3593 addresses. For the reasons expressed below, VA does not believe that the approach outlined in the bill will achieve the desired results, and thus does not support it.

VA believes the creation of a special project manager would be problematic in the management and supervision of these projects. Specifically, the special project manager adds more levels of management and may complicate, if not confuse, the project delivery process. The bill raises serious questions about the contractual relationship between the VA and its contractor, the lines of authority the special project manager will have vis-à-vis VA and the U.S. Army Corps of Engineers (USACE), and the effect upon the independent exercise of discretion by the VA contracting officer, who is ultimately responsible for managing the contract on behalf of the Government. The legislation we believe will also lead to increased management and overhead costs associated with funding the special project manager and support team.

VA continuously evaluates its processes and delivery methods for each lease and construction project on its merits, and we benchmark industry best practices with several agencies including the National Institute of Building Sciences, General Services Administration and the USACE. When VA determines that the best delivery strategy is to employ another agency such as the USACE, this strategy is used. VA and the

USACE have a long history of working together to advance VA facility construction and share best practices, and our current discussions are a logical evolution of that relationship.

Since 2008, VA has engaged USACE to support maintenance and minor construction projects at more than 70 of our medical facilities. VA engaged USACE to review the contracts for the New Orleans and Denver projects, and they continue to assist in schedule evaluation in Orlando. More recently, USACE is supporting VA in establishing a Project Review Board process, similar to the process used by USACE districts, and supporting the VA National Cemetery Administration in its maintenance and minor construction program.

As outlined in the cited Government Accountability Office (GAO) testimony and April 2013 report, the delays and cost increases on the Denver, New Orleans and Orlando projects occurred in the planning and design phases; each of these projects is now in the construction phase. Last year, VA took aggressive action on the recommendations in the April 2013 GAO report and all recommendations were closed as of September 2013. Their recommendations included the addition of medical planners, the streamlining of the change order process, and clearer definition of roles and responsibilities in the project management.

In addition to closing the GAO recommendations, VA has worked diligently to address and close all of the recommendations identified through the VA's Construction Review Council (CRC), which was established in 2012 and is chaired by the Secretary of Veterans Affairs to serve as the single point of oversight and performance accountability for the VA real property capital asset program. With the personal

commitment of the Secretary, and the diligent efforts of senior staff and management, all CRC recommendations have been implemented since October 2013. These recommendations include improvements in the development of requirements, measures aimed at improving design quality, better coordination of funding across the Department to support VA's major construction program, and advances in program management and automation. Through the CRC and the VA Acquisition Program Management Framework that provides for continual project review throughout the project's acquisition life-cycle, VA will continue to drive improvements in the management of VA's real property capital programs.

Our focus across the spectrum of construction project management has led to advancements in our overall construction program. Areas of increased effort include improving requirements definition and acquisition strategies, assessing project risk, assuring timely project and contract administration, partnering with our construction and design contractors, early involvement of the medical equipment planning and procurement teams, and engaging in executive level on-site project reviews. Additionally, the monthly updates provided to the Committees on key projects have increased the transparency in our program.

The way the Department is doing business today has changed significantly since the Orlando, Denver and New Orleans projects were undertaken. The lessons learned and the improvements made have resulted in positive changes and are being applied to help ensure the Department's capital program is delivered on time and within budget.

The costs associated with enactment of this legislation cannot be predicted with specificity, as they will depend on the scope and details of the arrangement mandated to be concluded with the USACE under the bill.

Draft bill to amend Title 38, United States Code, to improve the oversight of contracts awarded by the Secretary of the Department of Veterans Affairs to small business concerns owned and controlled by veterans with service-connected disabilities

Section one of the draft bill proposes to amend subsection (e) of §8127 to create a second requirement to eligibility for status as a Service-disabled Veteran-owned Small Business (SDVOSB). The newly inserted subsection (2) would provide that SDVOSBs may only be awarded set-aside contracts when, in addition to the requirements of verification, the SDVOSB submits a statement to VA explaining how the concern would meet applicable self-performance requirements to conduct 51 percent of work themselves, identifying employees who will be working on the contract and the work the employees will carry out under the contract, and the percentage of such work as compared to the total amount of work performed under the contract.

The bill would also amend subsection (g) of section 8127 regarding penalties by granting the Secretary authority to make a determination that a SDVOSB did not act in good faith with respect to the performance requirements of the contract regarding the requirement to have their own employees perform at least 51 percent of the work requirements. If that determination is made, the Secretary would retain amounts awarded under the contract in the same manner and amount as if the small business concern failed to comply with approved subcontracting plans, which appears to be a

reference to provisions concerning liquidated damages for failure to make a good faith effort to comply with a subcontracting plan, found at 15 U.S.C. § 637(d)(4)(F) and 48 CFR § 19.705-7. Lastly, the new statement required by the bill would be subject to the criminal false statements statute, 18 U.S.C. § 1001.

VA shares the Committee's concerns that Veterans perform the required percentages of work on set aside contracts. To that end VA contracting officers monitor the amount of work passed to subcontractors in accordance with the Federal Acquisition Regulations. In addition, VA has established a Subcontracting Compliance Review Program (SCRCP) which assesses contractor compliance with limitations on subcontracting requirements, subcontracting commitments, and subcontracting goals included in prime contracts with VA.

We appreciate the Committee's interest in the integrity of these important programs, but for the reasons set forth below, VA does not support the draft bill.

The requirements of this bill would be impractical, as many awardees will not have all the required information (such as names and amount of work to be performed) at the time of bid or offer, or even at the time of award.

We are also unclear whether the bill as drafted would only apply to SDVOSBs, as 38 U.S.C. § 8127 authorizes Veteran-owned Small Business set-asides within VA as well as SDVOSB set-asides.

Finally, VA believes that the provisions of this bill will place an onerous and unfair burden on SDVOSBs that is not placed on any other socioeconomic category of small business.

VA will provide its cost estimate for this bill for the record.

CONCLUSION

Mr. Chairman, this concludes my statement. Thank you for the opportunity to appear before you today. We would be pleased to respond to questions you or the other Members of the Subcommittee may have.